

**Remarks**

By the foregoing Amendment, Claims 1-8 and 13 are amended. Applicant respectfully submits that no new matter was added by the amendment, as all of the amended matter was either previously illustrated or described in the drawings, written specification and/or claims of the present application. Entry of the amendment and favorable consideration thereof is earnestly requested.

The Examiner has rejected Claims 1-7 and 13 under 35 U.S.C. 102(b) as being anticipated by Schwartz et al. (U.S. Pat. No. 4,462,404). This rejection is respectfully traversed in view of the above amendments and following remarks.

Applicant first respectfully reiterates that Claim 1 is generic to all species, as indicated by the Examiner in the Official Action dated May 19, 2008. While Applicant previously elected Species I for examination, in the event that Claim 1 is allowed, Applicants reserve the right to have the Examiner consider all species, as provided by C.F.R. 1.141. In Applicant also reserves the right to file divisional application(s) directed to Species II-IV if Applicant so chooses.

**NOVELTY - 35 U.S.C. 102(b)**

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

*Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicant respectfully submits that Claims 1-7 and 13 are not

anticipated by Schwartz because all of the claim limitations are not taught by the cited reference. Specifically, Schwartz does not disclose, (1) a spring fixedly connected to the handgrips of the handle, (2) via at least two stationary bearing points, and (3) wherein the locking of the two jaw members in both end positions is caused by the spring element only, as required by amended Claim 1.

Schwartz discloses a surgical instrument having two handgrips movable opposite one another against a spring force and with a lock that fixes the distance between the handgrips, wherein the locking mechanism includes a spring-type locking arm mounted between the handgrips with a free end that rides between a sliding surface located on the inside wall of one handgrip and a guide member.

Schwartz, however, fails to disclose or teach that the spring element forming the locking mechanism and connecting the two handgrips to one another is mounted fixedly between the handgrips of the handle via at least two stationary bearing points. Contrary to the instrument of Claim 1, the spring element disclosed in Schwartz is mounted slideable on one handgrip and therefore is neither fixedly connected to the one handgrip, nor is its bearing point on that one handgrip stationary.

Schwartz further fails to disclose or teach that the locking of the two jaw members in both end positions (open and closed) is caused by the spring element only, as required by amended Claim 1. First, the locking of the jaw members of Schwartz in the open position is caused by the spring arms 4 and 5 and not by the spring element 6. This is explained in Col. 4, lines 52-57:

[T]he ends of the two branches are designed as spring arms 4 and 5 which interpenetrate at the end and are bent overall in such a way that they press the two branches away from one another. Because of the force of these spring arms, the tweezers are in the open position at rest.

Second, the jaw members of Schwartz can *never* be locked in the closed position, let alone by the spring element only. The handgrips (and therefore jaws) of Schwartz can be locked in an open position and an intermediate position only. (See Figs. 2-4 and Col. 6, lines 7-45). Schwartz does not teach that the jaws can actually be locked in the closed position, but merely that the closed position is achieved by pressing spring arms 4 and 5 further together from the intermediate position, causing the guide pin to reach its forwardmost position on the sliding surface 9. At this point on the sliding surface 9, there is no step, or other mechanism to lock the locking pin 29 in place. Therefore, the jaws of Schwartz cannot be locked in the closed position, but rather, the handgrips must be held by the operator in order to maintain the jaws in the closed position. This is further evidenced by the fact that Schwartz teaches that once the tweezers have reached their maximum shut position, the distance between the branches will be increased under the influence of the two spring arms 4 and 5 alone. (See Col. 6, lines 46-48.) Nevertheless, the handgrips are not locked in the open position and the intermediate position by means of the spring element only, as required by Claim 1, as amended. Rather, the handgrips are locked in these positions by means of the spring action of the spring arms 4 and 5, and a locking pin 29 engaging a step 14 and a step 11, respectively. Accordingly, Applicant respectfully submits that claim 1, as amended, is patentable over the cited reference.

For the foregoing reasons, applicant submits that Claims 1-8 and 13, all of the claims currently pending in the application, are in order for allowance, and early notice to that effect is respectfully requested.

Respectfully submitted,

/Wesley W. Whitmyer, Jr./

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Wesley W. Whitmyer, Jr., Registration No. 33,558  
Attorney for Applicants  
ST.ONGE STEWARD JOHNSTON & REENS LLC  
986 Bedford Street  
Stamford, CT 06905-5619  
Tel. 203 324-6155